

1 BILL NO. S-82-09-20

2 SPECIAL ORDINANCE NO. S-174-82

3 AN ORDINANCE approving Improvement  
4 Resolution No. 5938-82, Goshen Avenue,  
5 with Dailey Asphalt Products Company,  
6 Inc., in connection with the Board  
7 of Public Works.

8 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF  
9 FORT WAYNE, INDIANA:

10 SECTION 1. That a certain Contract dated August 25,  
11 1982, between the City of Fort Wayne, Indiana, by and through  
12 its Mayor and the Board of Public Works and Dailey Asphalt  
13 Company, Inc., for:


14 the resurfacing and restoration of pavement  
15 on Goshen Avenue from the west pavement line  
16 of Sherman Boulevard to the south pavement  
17 line of Coliseum Boulevard West;

18 under Board of Public Works Improvement Resolution No. 5938-82,  
19 involving a total cost of One Hundred Ninety-Two Thousand Eight  
20 Hundred Twenty-Three and 24/100 Dollars (\$192,823.24), all as  
21 more particularly set forth in said Resolution and Contract which  
22 is on file in the Office of the Board of Public Works and is  
23 by reference incorporated herein, made a part hereof and is hereby  
24 in all things ratified, confirmed and approved. Two copies of  
25 said Contract are on file in the Office of the City Clerk and  
26 made available for public inspection, according to law.

27 SECTION 2. That this Ordinance shall be in full force  
28 and effect from and after its passage and any and all necessary  
29 approval by the Mayor.

30   
31 Councilmember

32 APPROVED AS TO FORM  
AND LEGALITY

  
Bruce O. Boxberger, City Attorney

Read the first time in full and on motion by Stier,  
seconded by Bradbury, and duly adopted, read the second time  
by title and referred to the Committee Public Works and the City  
Plan Commission for recommendation) and Public Hearing to be held after  
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,  
Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATE: 9-14-82

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Stier,  
seconded by Bradbury, and duly adopted, placed on its  
passage. PASSED (~~Lost~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____	_____
<u>BRADBURY</u>	<u>✓</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>✓</u>	_____	_____	_____	_____
<u>GIAQUINTA</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCRUGGS</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 9-28-82

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,  
Indiana, as (~~ZONING MAP~~) (~~GENERAL~~) (~~ANNEXATION~~) (~~SPECIAL~~)

(~~APPROPRIATION~~) ORDINANCE (RESOLUTION) NO. S-174-82

on the 28th day of September, 1982

ATTEST:

(SEAL)

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the 29th day of September, 1982, at the hour of  
11:30 o'clock A.M., E.S.T.

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 4th day of October  
1982, at the hour of 10 o'clock A.M., E.S.T.

Win Moses, Jr.  
WIN MOSES, JR. - MAYOR

BILL NO. S-82-09-20

REPORT OF THE COMMITTEE ON PUBLIC WORKS

WE, YOUR COMMITTEE ON Public Works TO WHOM WAS REFERRED AN  
ORDINANCE approving Improvement Resolution No. 5938-82, Goshen Avenue,  
with Dailey Asphalt Products Company, Inc., in connection with the  
Board of Public Works

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT  
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE AS PASS.

JAMES S. STIER, CHAIRMAN

BEN A. EISBART, VICE CHAIRMAN

VICTURE L. SCRUGGS

MARK E. GIAQUINTA

DONALD J. SCHMIDT

J. L.  
Blue A. L. L.  
Victoria L. Scruggs  
Mark E. Giaquinta  
D. Schmidt

9-28-82  
CONCURRED IN  
DATE 9-28-82 CHARLES W. WESTER 1497

This Agreement, made and entered into this 25 day of Aug, 1982

by and between ----- DAILEY ASPHALT PRODUCTS CO., INC. -----

----- 1122 THOMAS ROAD, FT. WAYNE, INDIANA 46804 -----

hereinafter called "Contractor" and the City of Fort Wayne, Indiana, a municipal corporation, hereinafter called "City," under and by virtue of an act of the General Assembly of the State of Indiana, entitled "An Act Concerning Municipal Corporations," approved March 6, 1905, and all amendatory and supplementary acts thereto, WITNESSETH: That the Contractor covenants and agrees to improve

Improvement Resolution No. 5938-82  
by resurfacing and restoring pavement as designated on the following streets to be known as:

(1) Goshen Avenue - From the west pavement line of Sherman Blvd. to the south pavement line of Coliseum Blvd. west.

NOTE: 4" Overlay

5' Stone Shoulders

Decels and Intersection Included.

with Hot Asphalt Binder (as per design mix formula)

with Hot Asphalt Top Surface (as per design mix formula)

by grading and paving the roadway to a width of XXXXXXXXXXXX feet with

XXXXXXXXXXXX

upon a foundation and with curbing as fully set out in the specifications hereinafter referred to, in a good and workmanlike manner and to the entire satisfaction of said City, in accordance with Improvement Resolution No. 5938-82 attached hereto and by reference made a part hereof.

and at the following price per lineal foot

At the following prices:

Pavement Removal	One dollar and no cents per square yard	
H.A.C. #9 Binder	Nineteen dollars and forty-seven cents per ton	19.47
H.A.C. "B" Surface	Twenty-one dollars and sixty-four cents per ton	21.64
Joint & Crack Sealer	Four hundred dollars and no cents per ton	400.00
#53 Crushed Stone	Six dollars and fifty cents per ton	6.50
Catch Basins - Adjust & Set to Grade	One hundred dollars and no cents per each	100.00
Manholes - Adjust & Set to Grade	One hundred dollars and no cents per each	100.00
Water Valves - Adjust & Set to Grade	Fifty dollars and no cents per each	50.00

Total	One hundred and ninety-two thousand, eight hundred and twenty-three dollars and twenty-four cents	\$192,823.24
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The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana that he has complied with Sections 5, 68, 69 of the Workmen's Compensation Act, approved March 14, 1929, in accordance with Section 14 of the Compensation Act (Acts 1929, page 545, being I.C. 22-3-2-1 et. seq.).

A copy of General Ordinance No. G-34-78 (as amended) concerning discriminating in employment under contract.

The Contractor hereby expressly agrees to perform all the work in the prosecution of the above described improvement according to the terms and conditions of Improvement Resolution No. 5938-82 the plans, profiles, specifications and the contractor's bid therefor on file in the office of the Department of Public Works of said City, which said resolution, profile, plans and specifications are made a part of this contract as fully and effectually as if copied herein at full length, (copies of which are attached hereto).

It is hereby agreed that no assignment of this contract shall be made without the written consent of the City; said Contractor hereby covenants and agrees that said improvement shall be finally and in all respects completed on or before Sept. 30, 19 82 and the Contractor agrees to pay and give to the City, as liquidated damages, the sum of \$25.00 for each and every day after said date

\_\_\_\_\_, 19\_\_\_\_ until said work is finally completed and ready for acceptance by the City. It being also understood that in event of any conflict between this contract and the specifications, that the former shall be considered to contain the intention of the parties hereto.

It is further agreed by and between said parties, that the acceptance of the work provided for in this contract, or the payment therefor, for the whole or a part, shall not constitute a waiver on the part of the City of any of the provisions of the contract, nor shall it release said Contractor, or the sureties upon its bond for the faithful performance thereof, nor shall the acceptance be even prima facie evidence of the performance of any provisions of such contract except to the extent of entitling said Contractor to receive the price therefor. It is further understood that the failure of the City to exercise its right of inspection or rejection of material and work, or the exercise of such right shall not in any sense be considered an acceptance of any part of said work or material.

The Contractor further contracts and agrees that in the prosecution of said work all proper skill and care will be exercised, that said party will properly and fully guard all excavations and dangerous places, and will use all due and proper precautions to prevent injury to any property, person and persons, what or whomsoever. That for and during the period of the making of such improvement, and the period for which the same is to be maintained and kept in repair by the Contractor, the City shall be saved harmless from any and all liability whatsoever growing out of any injury or damage to property or persons because of any neglect or fault of the said Contractor, its agents or employees, in the execution of this contract or any matter connected therewith or related thereto and to pay any judgment with costs which may be obtained against said City, growing out of any such injury or damage.

To each of the conditions and stipulations in this contract, the undersigned bind themselves, their successors and assigns.

IN WITNESS WHEREOF, we the foregoing named parties hereunto set our hands this 25

day of Aug, 1982.

ATTEST:

L. W. Dorely  
Corporate Secretary

DAILEY ASPHALT PRODUCTS COMPANY, INC.

BY: L. W. Dorely

TTS: President

Contractor, Party of the First Part.

City of Fort Wayne, By and Through:

ATTEST:

Sandra Kennedy  
Secretary and Clerk

Ray R. Collins  
Its Board of Public Works and Mayor.

R. J. Snuffer  
ASSOCIATE CITY ATTORNEY

PERFORMANCE AND GUARANTEE BOND

KNOW ALL MEN BY THESE PRESENTS, that we DAILEY ASPHALT PRODUCTS CO., INC. as Principal, and the St. Paul Fire & Marine Insurance Co., a corporation organized under the laws of the State of MINNESOTA, and duly authorized to transact business in the State of Indiana, as Surety, are held firmly bound unto the City of Fort Wayne, Indiana, an Indiana Municipal Corporation in the sum of ONE HUNDRED AND NINETY-TWO THOUSAND, EIGHT HUNDRED AND TWENTY-THREE DOLLARS AND TWENTY-FOUR CENTS -----

(\$ 192,823.24 -----), for the payment whereof well and truly to be made, the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. The condition of the above obligation is such that

WHEREAS, the Principal did on the 25 day of Aug, 1982, enter into a contract with the City of Fort Wayne to construct

Improvement Resolution No. 5938-82

To improve by resurfacing and restoring pavement as designated on the following streets:

(1) Goshen Avenue - From the west pavement line of Sherman Blvd. to the south pavement line of Coliseum Blvd. west.

NOTE: 4" Overlay  
5' Stone Shoulders  
Decels. and Intersection Included.

with Hot Asphalt Binder (as per design mix formula)  
with Hot Asphalt Top Surface (as per design mix formula).

at a cost of \$ 192,823.24-----, according to certain plans and specifications prepared by or approved by the City.

WHEREAS, the grant of authority by City to so construct such improvement provides:

1. That said improvement shall be completed according to said plans and specifications, and contractor shall warrant and guarantee all work, material, and conditions of the improvement for a period of three (3) years from the date of final acceptance in writing by the Owner;
2. There shall be filed with the City, within thirty (30) days after completion, a Completion Affidavit;
3. Said Principal is required to agree to make such adjustments, modifications, and repairs as required by the City within thirty (30) days after notice.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications.

NOW THEREFORE, if the principal shall faithfully perform all of the terms and conditions required of it by the contract and shall for three (3) years after acceptance of said improvement by City warrant and guarantee said improvement and shall indemnify the City for all loss that City may sustain by reason of the Principal's failure to comply with any of the terms of the authorization, then this obligation shall be void, otherwise it shall remain in full force and effect.

DAILEY ASPHALT PRODUCTS CO., INC.

(Contractor)

BY: *R. W. Dailey Jr.*

ITS: *President*

ATTEST:

*Gene P. Jones*

(Title)

*S. Paul Fire & Marine Insurance Co.*  
Surety

\*BY: *Robert R. Whitman*

Authorized Agent  
(Attorney-in-Fact)

\*If signed by an agent, power of attorney must be attached

ATTACH POWER OF ATTORNEY



PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

----- DAILEY ASPHALT PRODUCTS COMPANY, INC. -----  
(Name of Contractor)

----- 1122 THOMAS ROAD, FORT WAYNE, INDIANA 46804 -----  
(Address)

a CORPORATION, hereinafter called Principal,  
(Corporation, Partnership or Individual)

and St. Paul Fire & Marine Insurance Co.  
(Name of Surety)

and duly authorized to transact business in the State of Indiana, hereinafter called Surety, are held and firmly bound unto the City of Fort Wayne, an Indiana Municipal Corporation in the penal sum of ONE HUNDRED AND NINETY-TWO THOUSAND, EIGHT HUNDRED AND TWENTY-THREE DOLLARS AND TWENTY-FOUR CENTS for the payment whereof well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the 25 day of Aug, 1982, for the construction of:

Improvement Resolution No. 5938-82

To improve by resurfacing and restoring pavement as designated on the following streets:

(1) Goshen Avenue - From the west pavement line of Sherman Blvd. to the south pavement line of Coliseum Blvd. west.

NOTE: .4" Overlay  
5' Stone Shoulders  
Decels and Intersection Included.

with Hot Asphalt Binder (as per design mix formula)  
with Hot Asphalt Top Surface (as per design mix formula).

at a cost of ONE HUNDRED AND NINETY-TWO THOUSAND, EIGHT HUNDRED AND TWENTY-THREE DOLLARS AND TWENTY-FOUR CENTS  
(\$ 192,823.24), all according to Fort Wayne Street Engineering Department plans and specifications.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications, and

WHEREAS, no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

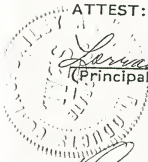


NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, this instrument is executed in 3 counter-  
(number)  
parts, each one of which shall be deemed an original, this 25 day of  
Aug, 1979.  
82

(SEAL)

ATTEST:

  
Samuel L. Gargner  
(Principal) Secretary

Ronald B. Gargner  
Witness as to Principal

(Address)

\_\_\_\_\_

Samuel L. Gargner  
Witness as to Surety

P.O. box 1367  
(Address)

Fort Wayne, IN 46801

NOTE: Date of Bond must not be prior to date of Contract.  
If Contractor is Partnership, all partners should execute bond.

DAILEY ASPHALT PRODUCTS CO., INC.

Principal

BY

H. W. Dailey, Jr.  
(Title)

(Address)

\_\_\_\_\_

St. Paul Fire & Marine Insurance Co.  
Surety  
BY Paul A. Whitman  
Attorney-in-Fact  
(Authorized Agent)

Yates, Zane & Rye, Inc.  
P.O. box 1367  
(Address)

Fort Wayne, IN 46801

**GENERAL POWER OF ATTORNEY - CERTIFIED COPY**  
(Original on File at Home Office of Company. See Certification.)

384848

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, a corporation organized and existing under the laws of the State of Minnesota, and having its principal office in the City of St. Paul, Minnesota, does hereby constitute and appoint:

**Arthur C. Frericks, Gerald A. Dahle, Donald T. Belbutowski,**  
individually, Ft. Wayne, Indiana

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise,

**NOT TO EXCEED IN PENALTY THE SUM OF TEN MILLION (\$10,000,000) EACH**

and the execution of all such instrument(s) in pursuance of these presents, shall be as binding upon said St. Paul Fire and Marine Insurance Company, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

This Power of Attorney is executed, and may be certified to and may be revoked, pursuant to and by authority of Article V, Section 6(C), of the By-Laws adopted by the Board of Directors of ST. PAUL FIRE AND MARINE INSURANCE COMPANY at a meeting called and held on the 23rd day of January, 1970, of which the following is a true transcript of said Section 6(C):

"The President or any Vice President, Assistant Vice President, Secretary or Resident Secretary shall have power and authority

- (1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and
- (2) To appoint special Attorneys-in-fact, who are hereby authorized to certify to copies of any power-of-attorney issued in pursuance of this section and/or any of the By-Laws of the Company, and
- (3) To remove, at any time, any such Attorney-in-fact or Special Attorney-in-fact and revoke the authority given him."

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of said Company adopted at a meeting duly called and held on the 6th day of May, 1959, of which the following is a true excerpt:

"Now therefore the signatures of such officers and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached."



IN TESTIMONY WHEREOF, St. Paul Fire and Marine Insurance Company has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 2nd day of January, A.D. 1980.

STATE OF MINNESOTA } ss.  
County of Ramsey

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

*[Signature]*  
Vice President

On this 23rd day of April, 19 82, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said that he/she is the therein described and authorized officer of St. Paul Fire and Marine Insurance Company; that the seal affixed to said instrument is the Corporate Seal of said Company; that the said Corporate Seal and his/her signature were duly affixed by order of the Board of Directors of said Company.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the city of St. Paul, Minnesota, the day and year first above written.

*[Signature]*

V.C. INNES, Notary Public, Ramsey County, MN  
My Commission Expires April 27, 1983

**CERTIFICATION**

I, the undersigned officer of St. Paul Fire and Marine Insurance Company, do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Section of the By-Laws of said Company as set forth in said Power of Attorney, with the ORIGINALS ON FILE IN THE HOME OFFICE OF SAID COMPANY, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.



IN TESTIMONY WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

*[Signature]*  
Secretary

Only a certified copy of Power of Attorney bearing the Certificate of Authority No. printed in red on the upper right corner is binding. Photocopies, carbon copies or other reproductions of this document are invalid and not binding upon the Company.

ANY INSTRUMENT ISSUED IN EXCESS OF THE PENALTY AMOUNT STATED ABOVE IS TOTALLY VOID AND WITHOUT ANY VALIDITY.

For verification of the authenticity of this Power of Attorney, you may telephone toll free 800-328-9821 and ask for the Power of Attorney Clerk. Please refer to the above Certificate of Authority No. and the above named individual(s).

TITLE OF ORDINANCE Resolution 5938-82 Goshen Avenue, Sherman to Coliseum Blvd.

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

SYNOPSIS OF ORDINANCE Resurfacing and Restoring pavement on Goshen Avenue from the west pavement line of Sherman Blvd. to the south pavement line of Coliseum Blvd. West. Contract was awarded to Dailey Asphalt Products Co., Inc.

Prior Approval received on July 6, 1982

EFFECT OF PASSAGE improvement of Goshen Ave.

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$192,823.24

ASSIGNED TO COMMITTEE